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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Gregory G. McGill,
Plaintiff,
v.
Sunrise Bank of Arizona, et al.,
Defendants.

No. CV-13-02003-PHX-NVW

ORDER

Before the Court are Defendant Federal Deposit Insurance Corporation’s Motion for Reconsideration of the FDIC’s Motion to Dismiss for Lack of Subject Matter Jurisdiction (Doc. 60), Plaintiff’s Memorandum of Points and Authorities in Opposition to FDIC’s Motion (Doc. 66) and Defendant’s Reply (Doc. 79). For the reasons that follow, Defendant’s Motion will be denied.

“Motions for reconsideration are disfavored and should be granted only in rare circumstances.” *United States v. Vistoso Partners, LLC*, No. CV10-0444 PHX DGC, 2011 U.S. Dist. LEXIS 69841, at *1 (D. Ariz. June 27, 2011) (citation omitted). “A motion for reconsideration will be denied ‘absent a showing of manifest error or a showing of new facts or legal authority that could not have been brought to [the Court’s] attention earlier with reasonable diligence.’” *Id.* (brackets in original) (citing LRCiv 7.2(g)(1)). “Mere disagreement with an order is an insufficient basis for reconsideration.” *Id.* (citation omitted). “Nor should reconsideration be used to make new arguments or to ask the Court to rethink its analysis.” *Id.* at *1-2 (citing *Nw. Acceptance Corp. v. Lynnwood Equip., Inc.*, 841 F.2d 918, 925-26 (9th Cir. 1988)).

1 Defendant has not shown a manifest error in the Court’s previous Order (Doc. 56).
 2 Defendant’s discussion of the relevant facts and legal authorities, while more thorough
 3 than in Defendant’s Motion to Dismiss Case as to Defendant Sunrise Bank Based Upon
 4 Lack of Subject Matter Jurisdiction (Doc. 30) or its Reply (Doc. 47) in support of that
 5 Motion, covers no new ground. Instead, Defendant’s Motion merely “ask[s] the Court to
 6 rethink its analysis.” *Id.*

7 The demanding standard governing motions for reconsideration aside, Defendant’s
 8 arguments are unpersuasive. Defendant is right that the mere pendency of Plaintiff’s
 9 state court action at the time Sunrise Bank of Arizona (“Sunrise”) went into receivership
 10 does not excuse Plaintiff from complying with 12 U.S.C. § 1821(d)(3)(B)(i)’s
 11 requirement that he “present [his] claims, together with proof, to the receiver” by the
 12 statutorily specified date. *See Intercontinental Travel Mktg. v. FDIC*, 45 F.3d 1278,
 13 1282-83 (9th Cir. 1994) (“In *Henderson v. Bank of New England* we held that no
 14 jurisdiction exists if a claimant does not exhaust [the Financial Institutions Reform,
 15 Recovery and Enforcement Act of 1989’s] administrative process. … [W]e see no reason,
 16 in § 1821(d) or any other source, why that holding should not apply to cases in which the
 17 claimants filed their action *before* the FDIC was appointed as receiver, and we extend
 18 *Henderson’s* holding accordingly.” (emphasis in original) (citation omitted)). But
 19 Defendant places too much stress on the statute’s requirement that a claim include
 20 “proof” of its allegations.

21 As Defendant concedes, Plaintiff need not use the FDIC-provided Proof of Claim
 22 form when filing his claim. Doc. 60 at 2. His August 2013 emails to Defendant
 23 regarding alleged fraud by Sunrise can therefore suffice, as long as they provide adequate
 24 notice to Defendant of Plaintiff’s claim. Defendant repeatedly cites language from a
 25 Third Circuit case holding that a claim filed with the FDIC under § 1821(d) must be
 26 “identified, quantified and substantiated.” *FDIC v. Shain, Schaffer & Rafanello*, 944
 27 F.2d 129, 132 (3d Cir. 1991). As an initial matter, this Court is not bound by the
 28 decisions of the Third Circuit or its subsidiary district courts. Defendant writes that

1 “courts have *consistently* held that a claimant, such as Plaintiff, must provide the FDIC-R
 2 with more than a simple notice of a claim; he must provide actual *proof* of the underlying
 3 facts and ensure that the claim is sufficiently ‘**identified, quantified and substantiated**,’”
 4 Doc. 60 at 2 (first emphasis added) (bold and underlining in original), yet Defendant’s
 5 Motion provides no citation to Ninth Circuit authority for this proposition. The Motion
 6 does cite to an opinion from the Eastern District of California, but that opinion nowhere
 7 uses the words “identified,” “quantified” or “substantiated.” *See Cipponeri v. FDIC*, No.
 8 CIV-F-09-0688 AWI DLB, 2010 U.S. Dist. LEXIS 63000 (E.D. Cal. June 24, 2010).
 9 Moreover, the “identified, quantified and substantiated” language in *Shain* was offered in
 10 passing; that case simply did not address the question of how detailed a claim must be in
 11 order to give the FDIC sufficient notice of potential liability.

12 Even if this standard were “consistently” applied in other circuits, and even if it
 13 were binding on this Court, Defendants have not established that Plaintiff’s August 2013
 14 emails to the FDIC fall short. Far from a “rambling account of his state court lawsuit,”
 15 Doc. 60 at 6, Plaintiff’s August 23, 2013, email to Greg Hernandez in the FDIC Office of
 16 Communications offers a relatively clear, straightforward and concise, yet thorough,
 17 account of the acts he alleges Sunrise committed. The email does not cite to statutory
 18 provisions or case law that would support Plaintiff’s claim, but it alleges that Sunrise
 19 committed “valuation fraud,” made a loan in violation of its own internal policies, and
 20 induced Plaintiff to take out a loan without disclosing the underlying land’s true value.
 21 Defendant was not left “to dig through the exhibits in order to surmise what claims
 22 [Plaintiff] might possibly bring.” Doc. 79 at 3 (quoting *FirsTier Bank, Kimball, Neb. v.*
 23 *FDIC*, 935 F. Supp. 2d 1109, 1119 (D. Colo. 2013)). The email, which provides
 24 significantly more information than could fit on the FDIC’s own Proof of Claim form,
 25 sufficiently “identifie[s]” Plaintiff’s claim.

26 It is true that Plaintiff’s emails nowhere specify an exact dollar amount that he
 27 seeks from Defendant. But neither § 1821(d) nor any case cited by Defendant requires
 28 such a precise calculation. Plaintiff’s August 23, 2013, email—which describes the size

1 of the loan he took out from Sunrise, as well as the alleged true value of his land—
 2 provides enough detail that Defendant cannot plausibly be left wondering “whether he is
 3 requesting \$5 or \$5 million.” Doc. 79 at 4.

4 Finally, Defendant’s Motion asserts repeatedly that Plaintiff’s emails contain “no
 5 proof of any kind” regarding his allegations (Doc. 60 at 7) (emphasis in original), but it is
 6 not clear exactly what kind of proof Defendant believes Plaintiff should have offered, but
 7 did not, in order to “substantiate” his claim. If Defendant’s view is that Plaintiff should
 8 have submitted affidavits, spreadsheets, business records, receipts or other supporting
 9 documents along with his emails, it has neither expressed that position clearly nor cited to
 10 any supporting authority. In the absence of a clear indication that the Ninth Circuit
 11 requires “proof” of this kind, the Court declines to impose such an onerous obligation on
 12 those seeking to lodge claims with the FDIC. The *Cipponeri* court did hold, as
 13 Defendant argues, that a plaintiff who submitted the FDIC’s Proof of Claim form, along
 14 with a copy of his state court complaint, could not be heard in federal court because he
 15 “did not provide any evidence for FDIC to determine whether the claim was meritorious”
 16 and thereby failed to exhaust the administrative claims process. 2010 U.S. Dist. LEXIS
 17 63000, at *6, 19. But the FDIC in that case had sent the plaintiff an individually
 18 addressed letter asking that he submit evidence supporting his claim, which plaintiff
 19 failed to provide until the claims bar date had passed. *Id.* at *3. No such facts exist in
 20 this case. In any event, the *Cipponeri* court, given the “lack of clarity and detail” in
 21 FIRREA’s rules and the “unique facts” of that case, was sufficiently unsure of its holding
 22 that it explicitly encouraged the plaintiff to appeal its ruling. *See id.* at *21.

23 Though lacking the clarity and organization expected of complaints filed in this
 24 Court, Plaintiff’s August 2013 emails to Defendant provide enough information to
 25 qualify as the filing of a “claim” with the requisite “proof.” 18 U.S.C. § 1821(d)(3)(B)(i).
 26 Defendant has not produced new facts or law that would justify reversing the Court’s
 27 previous Order.

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1 IT IS THEREFORE ORDERED that Defendant Federal Deposit Insurance
2 Corporation's Motion for Reconsideration of the FDIC's Motion to Dismiss for Lack of
3 Subject Matter Jurisdiction (Doc. 60) is denied.

4 IT IS FURTHER ORDERED that Plaintiff's Motion for Oral Argument and for
5 Leave to File Proof Re: Conveyed Damages (Doc. 94) is denied.

6 Dated this 14th day of October, 2014.

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11 Neil V. Wake
12 United States District Judge
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